

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PA:02

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Date:

August 16, 2011

### LEGEND:

Company =

State A =

State B =

Dear :

This letter responds to the ruling request dated March 25, 2011, submitted on Company's behalf by its authorized representative, concerning whether Company is required under section 6041 of the Internal Revenue Code to file information returns with respect to payments of supplemental unemployment insurance benefits.

### FACTS

Company is a property and casualty insurer licensed and located in State A. Among the types of insurance that Company sells is supplemental unemployment insurance. Company is licensed to sell supplemental unemployment insurance in State B under a policy that Company submitted to the State B Department of Insurance for approval. Company will issue policies providing supplemental unemployment insurance coverage to individuals who are employed in State B at the start of a policy period. The policy period begins on the date shown in an insured's policy and, unless extended, ends on the earlier of the date shown in the policy or the effective date of either party's cancellation of the policy. There is no coverage during the first six months of a new policy, and any unemployment or advance notice of unemployment occurring during that time results in no entitlement to benefits and voids the policy.

The sample policy submitted with the ruling request provides that Company will pay “supplemental unemployment benefits” to an insured individual for a period of involuntary unemployment covered by the policy. The benefits under the policy supplement public unemployment benefits paid by the State of State B. To the extent State B unemployment benefits (along with any payments of unemployment or supplemental unemployment insurance under some other insurance policy) are less than 50 percent of an insured’s wages (as defined in the policy), policy benefits are payable to make up the difference. A formula to calculate the amount of benefits payable is set forth in the policy. An individual must be approved for and must actually receive state unemployment benefits for a prescribed number of weeks (labeled in the policy as an “Elimination Period”) to be eligible for benefits under the policy. A number of other stated conditions and exclusions apply as well. For example, the policy insures only against loss of full-time employment; an insured must not have actual or constructive knowledge of impending unemployment at the start of the policy; and unemployment cannot be due to events such as illegal conduct, war, an act of terrorism, or a labor dispute. Supplemental unemployment benefits will generally end when involuntary unemployment ends, state benefits stop accruing, or the maximum benefits are paid out under the policy, whichever is earlier.

The supplemental unemployment insurance can be purchased in different ways. In some cases, employers may offer their employees the option to purchase the insurance through the employer. Employees who elect this option pay the premiums for the insurance through voluntary, after-tax deductions from their wages, and the employer remits the premium payments to Company on the employee’s behalf. Alternatively, individuals can purchase supplemental unemployment insurance directly from Company online or through licensed insurance agents, and thus without an employer’s involvement. The premiums for Company’s supplemental unemployment insurance are based on prevailing market rates and on the experience rating associated with an individual’s employment. Premium payments are due according to a schedule specified in the policy. Coverage is portable from one job to another, though the dollar amount of premiums (and presumably the benefits) could change.

An insured claims the benefits under a policy by timely notifying Company of involuntary unemployment and submitting a completed claim form and supporting documents as proof of loss, to establish that the insured is receiving approved state unemployment benefits. An updated claim is required for each week in which public benefits are paid, and a claim is due within 60 days after the end of the corresponding week.

### LAW AND ANALYSIS

Section 6041(a) requires anyone “engaged in a trade or business and making payments in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or

determinable gains, profits, and income (other than payments . . . [reportable under certain other sections not relevant here]), of \$600 or more in any taxable year” to file an information return with the Internal Revenue Service reporting the amount of the gains, profits, or income paid and the name and address of the recipient. If a payor is required to file an information return with the IRS under section 6041(a), the payor must also furnish a statement to the payee showing the amount reported and the name, address, and phone number of the payor’s point of contact. I.R.C. § 6041(d). The \$600 threshold in section 6041 is measured as an aggregate of payments to the payee during the calendar year. See Treas. Reg. § 1.6041-1(a)(1)(i). The IRS has designated Form 1099 Series returns to report section 6041(a) payments. Treas. Reg. § 1.6041-1(a)(2). Form 1099-MISC is the prescribed form to report payments of miscellaneous income.

The information reporting requirement of section 6041 only applies, however, to payments made during the calendar year to another person of “fixed or determinable income.” Treas. Reg. § 1.6041-1(a). Income is broadly defined and encompasses virtually any accession to wealth. *Commissioner v. Schleier*, 515 U.S. 323, 327 (1995); *Commissioner v. Kowalski*, 434 U.S. 77, 82-83 (1977); *Lonsdale v. Commissioner*, 661 F.2d 71, 72 (5th Cir. 1981) (per curiam). Section 61(a) in particular provides that, except as otherwise excluded by the income-tax provisions of the Code, gross income includes income from whatever source derived. See also Treas. Reg. § 1.61-1(a) (providing that income may be realized in any form). Accordingly, an individual must include in gross income any accession to wealth, unless an exclusion applies.

While any accession to wealth is generally income, not all income is fixed or determinable. Income is “fixed” when it is to be paid in amounts definitely predetermined. Treas. Reg. § 1.6041-1(c). Income is “determinable” when there is a basis of calculation by which the amount to be paid may be ascertained. *Id.* Because section 6041(a) is conditioned on a payor knowing that a payment to a payee is in the nature of income and the amount of such income, if a payor cannot determine either that a payment is in the nature of income or in what amount, then the payor is not required to file an information return under section 6041(a). For instance, the Service held in Rev. Rul. 80-22, 1980-1 C.B. 286, that an insurance company was not required to file returns under section 6041(a) for crop insurance proceeds paid to certain farmers because the insurer did not know if the payments were income to the farmers. For farmers who had informed the insurance company that they were required to capitalize farming expenses, the amount of insurance proceeds constituting income depended on each farmer’s basis in the destroyed crops. That information was not known to the insurance company, and the company could not require the farmers to disclose the information. As the revenue ruling illustrates, however, the facts and circumstances must render the income not fixed and determinable.

In this case, any benefits that an insured receives under a policy with Company for supplemental unemployment insurance are an accession to wealth, *i.e.*, income. Additionally, there are no applicable provisions of the Code that exclude any part of

these benefits from gross income. The entire amount of benefits paid (without regard to premiums) therefore is includible in the recipient's gross income. Any benefits paid are also fixed and determinable income. Company will know when it pays the benefits, which are paid in predetermined or "fixed" amounts, that the benefits are entirely income, and Company will know the amount of the income (it is "determinable").

### CONCLUSION

For the reasons discussed above, we conclude that to the extent Company pays benefits of \$600 or more to an insured under a policy for supplemental unemployment insurance during a calendar year, Company must file Form 1099-MISC with the IRS to report the benefits paid and must furnish a payee statement to the insured.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The ruling contained in this letter is based upon information and representations submitted by the requester and accompanied by a penalty-of-perjury statement executed by an appropriate party. Although this office has not verified any of the material submitted in support of the ruling request, this material is subject to verification on examination.

This ruling is directed only to the person requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Enclosed is a copy of the letter ruling showing the deletions proposed to be made when the letter is disclosed under section 6110 of the Code.

In accordance with the power of attorney on file, a copy of this letter is being sent to your authorized representative.

Sincerely,

Pamela Wilson Fuller  
Senior Technician Reviewer  
(Procedure and Administration)

Enclosure (1)